

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 5TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/1030/16

BETWEEN:

ABEL BEHORA

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PLAINTIFF

AND

1. JOHN MOMOH
2. OLUWUMI AGUNBIADE
3. J.M. ISA
4. N. EMMANUEL
5. C. OGBONNA
6. A. OLAYINKA
7. USMAN JUBRIL
8. C. OJIYI
9. HENRY OGAR
10. ELOKE OKWECHIME
11. SIMEON ABUH
12. ERIC OKAFOR
13. NASIDI AL-HASSAN
14. ABU YELDU
15. JACOB OLATUNJI
16. DAVID GALA

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DEFENDANTS

JUDGMENT

Abel T. Behora is a business man who claims to be the bonafide allottee of Plot 1218 CAD Zone AO1 at Garki 1 District, Abuja FCT. On the 22nd day of February, 2016 he instituted this action against John Momoh and fifteen other Nigerians all resident at Zulu Close Area 8 Garki, Abuja FCT.

According to Abel Behora, he was allotted the said Plot 1218 on the 10th day of May, 2011. He tendered the letter of Allocation.

He was given the site plan by AGIS on the 25th day of May, 2011. And on June 2011 he was given the Certificate of Occupancy Bill of Fourteen Million, Eighty Four Thousand, Seven Hundred and Sixty Naira (₦14, 084,760.00). He tendered these documents. He was issued the Revenue receipt for the Certificate of Occupancy Bill he paid. That document was equally tendered in evidence. So also he was issued the evidence of payment of the remaining Bill. He was issued the Building Plan Permit after he paid Four Hundred and Four Thousand, One Hundred and Twenty Four Naira, Ninety Kobo (₦404, 124.90). He also tendered the document and evidence of payment.

Before the approval was issued, the Defendants petitioned the FCT Minister asking him not to approve the said Building Plan. He pleaded a copy of the petition and gave notice to the Defendants to present the original copy of the document.

Upon receipt of the petition by the Honourable Minister FCT titled "Attempt at illegal development of Area 8 Section 2" in which the Defendants complained that Plot 1218 was

a buffer zone/Green Area and that the Plot has sewage system, drainage and water pipeline running through, it set up a panel to investigate the allegation.

The Engineering Service Department as well as AGIS, Parks and Recreation, Environmental Protection Board and Urban and Regional Department were all Co-opted to investigate the allegation. At the end of their investigation, they all came up with a report confirming the genuineness of the allocation of Plot 1218, stating that the Plot was never designated as a Green Area and that it does not have water and sewage pipes running through it. He attached Certified True Copy (CTC) of the reports. After that he was issued the Building Plan Permit on the 26th day of April, 2014 since the petition and allegation therein was unfounded and lacked merit. He was issued the approval via letter dated 6/1/15 Ref.No: FCDA/DC/BP/RSP/10513. This letter was tendered too.

On the 15th day of December, 2014 the Defendants instituted an action at the Urban Regional Tribunal in Suit No: FCT/URPT/51CV/14. This document was also tendered. His Counsel filed a defence to the Suit as well as Preliminary Objection challenging the jurisdiction of the Tribunal to entertain such Suit. The Preliminary Objection was over ruled. The Counsel went to High Court at Jabi in Suit No: CV/2242/15 sought for and obtained an Order of certiorari restraining the Tribunal from continuing the proceeding pending the determination of the substantive Motion on Notice. The Certified True Copy (CTC) of all the documents were tendered. To him the Defendant do not have any interest in the plot. But to the Defendant they

claimed they have interest in the said plot. The Defendants admitted having written the petition and asked the plaintiff to prove the genuineness of ownership. They stated that they have civic responsibility to protect the environment. They claimed that the land authorities have agreed to reinvestigate the findings and survey of the plot 1218. Based on the above the plaintiff instituted this action seeking for the following reliefs:

- (1) A Declaration that he is the rightful owner of the plot 1218 measuring 2347.46 sqm.
- (2) That the Defendant not being the FCT minister cannot stop or prevent him from developing the said plot 1218 since the said plot has not been revoked by the said FCT minister.
- (3) A Declaration that having obtained all the necessary building plan approvals and all other necessary land title documents he is entitled to develop the plot within the limited time frame contained in the building plan.
- (4) An Order of perpetual injunction restraining the Defendants their agents, privies and assigns and by whatever name called from stopping, interfering with, harassing and in any way challenging this proprietary interest in the said plot which was dully allocated to him vide a letter of Allocation dated 10th May, 2011.

On the 9th day of November 2017 the plaintiff opened its case tendered documents through their only witness PW1 who is the plaintiff himself. He was cross examined by the Defendants. On the 8th March, 2018 the Defendants opened their defence.

The Plaintiff tendered 19 documents in support of his claim. The Defendants called one Witness who testified and was cross-examined. They did not tender any document. The Defendants applied for subpoena of a writ to tender documents and testify too. Matter was adjourned to 8th day of May, 2018 for the Defendants to continue their defence. Till date the Defendants never called the subpoenaed witness as was approved. No reason given for their absence. After one year and 7 month, and several adjournments to see if the Defendants will come to Court or come up with their subpoenaed witness the Plaintiff Counsel applied that the Defendants be foreclosed from calling the witness and going on with their defence. The Court granted that and adjourned the matter for final address. The Court granted that because it cannot wait for the Defendants in perpetuity. It is imperative to point out that the Court ensured that the Defendants were served Hearing Notices for all time the matter was to come up.

On the 5th day of February, 2020 the Plaintiff Counsel adopted their final address which was served on the Defendants long before then. The Defendants did not file any Final Address though they were dully notified that the matter was coming up for adoption of Final Address.

So this Judgement is based on the case of the Plaintiff and Defendants as presented by their respective Witnesses and as contained in their Witness statement on Oath and Claim and Defence and testimonies of those Witnesses.

The Court will go on to summary the case of the Plaintiff as presented in the Final Address filed by him after the

summary of the case of the Defendants as presented by their Witness and in their Statement of Defence.

The Defendant Witness did not present any document. He adopted his 12 paragraphs Statement on Oath. The main issue the DW1 raised was that the plot in issue (Plot 1218) is in Green Area which according to them was not allocated for residential development. The DW1 told the Court that they contacted the Private Town Planner to investigate the plot to see if it is in Green Area as the Defendants claimed. But he did not tender the report by the said Town Planner. He did not disclose his name or the name of his organisation that contacted the Town Planner for the Court. In paragraph 4 of his Oath he referred to the Master Plan but did not attach any Certified True Copy (CTC) of the Master Plan. Again in paragraph 5 he referred to a Gazettee saying that there is a Gazette to show that the Master Plan has been attached to show genuineness of the Plaintiff allocation. But he did not attach any Gazette to prove his defence. That the land was allocated without due process.

Even the averment in paragraph 6 where the DW1 claimed that they wrote to the FCDA to tell them about the “illegal” allocation was equally unsubstantiated because they did not tender the letter he claimed the Defendants wrote to FCDA and FCT Minister complaining that the allocation was done without due procedure.

So also is the allegation that they have asked the Minister of FCT to allocate another land to the Plaintiff; that was

unsubstantiated too. He confirmed the case at the Urban and Regional Tribunal.

Again the allegation the Defendants made about some Beacons being along the Road in the plot 1218 was equally unsubstantiated as he could not put before the Court any picture to that effect. He confirmed under Cross-examination that he signed EXH 7 & 8. He said he did not know if there was a letter from Urban and Regional as well as Development Control showing that the Res is not a Green Area.

When asked what his interest was in the land and whether he has suffered or what he will lose because of the allocation, he said that the allocation will make them not to have a better view of the road network in the area. That the trees in the area are wind breakers. That the presence of the Plaintiff will cause packing space problem to them and affect the place of the Defendants. Also that it will affect the public infrastructure. He stated that he was aware that the Development Control had given approval to the Plaintiff since the 6th day of January, 2015. He confirmed the letter – (petition) he wrote to the FCT Minister (EXH 6 & 7) that they have not received any response from the Minister on the letters.

As stated earlier the Defendants did not call the Subpoenaed Witness to testify or present document even a copy of the petition they wrote to FCT Minister.

On their own side, the Plaintiff testified as PW1 and was cross examined by Defendants' Counsel. He tendered documents – 19 documents. In his Final Address the

Plaintiff Counsel raised on his behalf an Issue for determination which is:

“Whether the Claimant has proven his case on the Preponderance of Evidence laid before the Court as to be entitled to the Reliefs sought against the Defendants?”

He submitted that he has established his case and is entitled to the Reliefs claimed against the Defendants. He referred Court to S. 135 EA 2011 as amended and these cases of:

Orji V. Dorji Textile Mill Nigeria Limited
(2010) 5 WRN 68 Line 40 –45

Aitiegbemilin V. RTAG
(2012) 44 WRN 120 @ 139 – 140 Line 45 – 5

That he had presented 19 documents to prove his case and his title to the Plot 1218. He referred to the case of:

(1) Nwokobia V. Nwogu
(2009) 10 NWLR (PT. 1150) 553

(2) Idudun V. Okumagba
(1996) 9-10 SC 227

That all the documents tendered by the Plaintiff in prove of his title to the land were all issued to him by the authority vested with the granting and vesting of land in the FCT.

That the Defendants had not laid claim to ownership of the land or presented any document of title to show ownership

of the land. That they have only stated that there is sewage, waterline and that the Plot will obstruct their view; All these claims which are false and unsubstantiated just like their claim of the beacon being along a major high way. That even the letter written by the Defendants – EXH 7 & 8 did not stop the allocation and approval of Building Plan Permit issued to the Plaintiffs. That EXH 9 & 10 letters from Parks and Recreation Department and AGIS shows that both bodies have no commitment on the Res as the Defendants erroneously claimed. That the Defendants did not present a single document to establish its defence to the case of the Plaintiff. That the Defendants admitted that the Plot was allocated to Plaintiff and to no one else. That they confirmed it was for residential purpose only.

He submitted that all these facts admitted by Defendants need no further proof. He referred to S. 123 EA 2011 and the case of:

IBWA V. Unakalamba
(1998) 9 NWLR (PT. 565) 245 @ 264

He urged Court to dismiss the case of the Defendant, they having failed to establish a defence to this case. He also referred to the cases of:

Adewunmi V. Okefade
(2010) 23 WRN 25 @ 38 line 40

UAC V. Mcfoy
(2000) 18 WRN 135

The Plaintiff went on to submit that the Defendants are not parties to the transaction between the Plaintiff and the FCT

Minister who allocated the land to the Plaintiff based on the power conferred on him by virtue of **S. 297 (2) of the 1999 Constitution as amended** and **S. 1 (3) FCT Act** and **S. 18 FCT Act**.

That the Defendants have no right to question the validity of the operations and duty/responsibility contract between the Plaintiff & FCT Minister. He referred to the case of:

Texaco Nigeria Limited V. Alfred Kehinde
(2001) 7 NWLR (PT. 708) 224

The Plaintiff equally submitted that the Defendants failed to present documents to show where the Plot in issue was designated as a Green Area. That EXH 9, 10 & 11 are uncontroverly and unchallenged as the Defendants failed to prove otherwise. He submitted that unchallenged evidence remains uncontroverted and is deemed admitted. He cited the case of:

Abiola V. Alawoye
(2007) 3 WRN 177 @ 197 – 198

He urged the Court to hold on balance of probability that the plaintiff have established his case by credible evidence and as such is entitled to his Claims. He urged the Court to resolve this issue in the favour of the Plaintiff and grant the Reliefs as sought. That since the Defendants did not tender any documentary evidence the Court cannot act on its instinct to determine their stand. He urged Court to dismiss the Defence with substantial cost and grant all the Reliefs sought by the plaintiff in this case.

After the summary of the case of the Plaintiff and the Defence by the Defendants, can it be said that the case of the Plaintiff is unchallenged and the facts thereon uncontroverted by the Defendants in this Suit in that the Court should so hold and therefore grant all the Reliefs as sought by him in this case?

Again can it be said that the Defendants has been able to defend and controvert the case of the Plaintiff so much so that the Court should dismiss the case of the Plaintiff in its entirety and refuse to grant the Reliefs sought?

Also can it also be said that the Plaintiff have established his case on balance of probability with the testimony of the PW1 as supported by the 19 documents which he tendered in evidence in the cause of his testimony; More so as the Defendants did not tender any of the documents they referred to in both of their Statement of Defence and in the testimony of the DW1.

Not taking the question seriatim, it is the humble view of this Court that the Plaintiff had established his case on the balance of probability by both his testimony and documents he tendered in the cause of his testimony.

The Defendants did not live up to expectation in the Defence of this Suit. They did not tender any document which they pleaded in their Statement of Defence.

They could not establish their interest and ownership of the Res. The reason given by them was that the Res was allocated or designated as Green Area was highly

unsubstantiated as they did not present any document to buttress or prove that.

Again they could not fault the allocation of the Plaintiff either. All the documents they pleaded were not tendered. All the letters they claimed were written to the FCT Minister were never tendered in Court or attached to their Process. The Court holds that those facts are *theresay* as they were not established. They were mere unsubstantiated assertion. This Court does not believe them. Also the question of the Beacons in the Res being planted along the major road are all unsubstantiated, just like the so called report from the unnamed and unidentified town planner who the DW1 claimed they engaged to do the job for them. He did not tender that report in evidence. For reason best known to them, their Subpoenaed Witness did not come to testify or tender any document. They did not give the Court any reason for the said Witness not to appear before the Court.

All the above made the Court to hold that the Defendants are meddlesome interlopers who should have used their time to do better thing than to trespass into the Res which was lawfully and legally allocated to the Plaintiff by the FCT Minister who has the requisite delegated powers to do so. That is why the Court holds that the case of the Plaintiff though challenged by virtue of the fact that the Defendants only filed a Statement of Defence, but was uncontroverted because the Defendants could not adduce evidence enough to controvert same or substantiate their Defence.

This Court holds that the Plaintiff established and proved his case on balance of probability going by the testimony of the PW1 and the 19 documents he tendered all of which were not controverted by the Defendants.

It is important to reiterate that allocation of land and the purpose of allocation is at the exclusive right/powers of the FCT Minister as delegated by the President. No individual has the right to dictate to the Minister the purpose/use of any land so allocated. It is left for the Minister to so state. Anyway in every allocation the purpose for such allocation is clearly stated in the allocation paper.

In this case the purpose for the allocation of the Res is for Residential and nothing more. The Defendants or any one has no right to question or challenge the purpose upon which any allocation is premised. They have no right to trespass or disrupt any construction based on the fact that it is for or ought to be for any purpose of their choice other than the purpose for which the allocation is given. So the Defendants disruption of the Plaintiff's construction works on the Res is a trespass, so this Court holds. The Defendants has no right to interrupt the construction.

The Plaintiff tendered the letter of Allocation, Offer of Statutory Right of Occupancy – EXH 1. He tendered Statutory Right of Occupancy Bill – EXH 2 showing that the Res was lawfully allocated to him in his personal name. He equally tendered the Site Plan – EXH 3 showing the map of the site and its position showing clearly that the site did not encroach on the major road as the Defendants erroneously and deceptively stated/claimed. He also

attached evidence of payment of the Cofo Seven Million Naira (N7, 000,000.00) by the Receipt issued in his name by AGIS.

To further establish and prove his ownership of the Res, the Plaintiff attached the Building Plan Permit evidencing payment of Four Hundred and Four Thousand, One Hundred and Twenty Four Naira, Ninety Kobo (N404, 124.90) which is the amount paid for the processing of the Building Plan Permit – EXH 5. He also attached the Receipt evidencing the payment of the said amount shown as EXH 6. It was dated 2/4/14.

To show transparency and to also establish the disruption and trespass by the Defendants, the Plaintiff attached a letter written by the Defendants to the FCT Minister in which they complained about the construction works at the Res. That letter was dated 10/6/11, in it they described the Plaintiff as illegal developer. But strangely the same Defendants acknowledged the fact that the Plaintiff is the rightful allottee of the Res and that he is also consultant with AGIS as shown in the 7th paragraph of the letter. That letter is EXH 7. That letter confirms the action of the Defendants in the interference and disruption. So also the letter of Complaint by Resident of the Zulu Close Area 8, Abuja. The Defendants were not able to prove that the land was not approved for construction of residential building as they claimed.

The Plaintiff also attached the letter from AMMC to Director AGIS requesting for the confirmation of the status of the land – Res as EXH 9. He equally attached the response to

the letter from Department of Parks and Gardens directed to the Director Development. Permit Unit of Development Control Department attaching letter written to Urban and Regional Planning Department and AGIS – EXH 9. Of interest is the response to EXH 9 which is from Urban and Regional Planning Department dated 28/4/14 for clarity and posterity it states as follows in paragraph 2 thus:

“I am directed to inform you that Plot 1218 (Res) Garki CAD Zone (AO1) is for residential use (High Density).”

The above seals the deal as far as the ownership and purpose for the Res is concerned. It is based on the above – EXH 11 that the permit for construction was given. The Defendants were not able to controvert this document which came from the appropriate authority and legally issued to the Plaintiff.

This letter (EXH 11) was what heralded the – EXH 12 – Conveyance of Building Plan Approval issue on 6/1/15 signed by the Director Development Control for Co-ordinator of AMMC.

EXH 13 – 19 were all Court Processes filed by the parties at the Urban and Regional Planning Tribunal where the Defendants instituted an action against the Plaintiff.

All those shows further the length and extent of the disruption and obstruction inflicted by the Defendants against the Plaintiff which interfered with the Plaintiff's legitimate and lawful and legal rights to the Res and the extent of the delay caused by the Defendants in the cause of the construction of the Res.

There is no doubt that the Plaintiff suffered tremendously by the said interference with the construction as a result of the Defendants action. The period the Defendants wasted in taking the Plaintiff from the Urban and Regional Tribunal to the time they expended in writing the petitions and complaints, the Plaintiff would have utilized in completing the construction of the Res.

Without doubt the Plaintiff suffered several loss because of the Defendants' action. He deserves and is entitled to some damages.

As it is glaringly clear, the Plaintiff had established his case beyond balance of probability and as such is entitled to the claim.

His claim to ownership of the Res is not in doubt. His authorization to construct residential building in the Res is equally not in doubt as same was based on due process and procedure with all the requisite approvals from the appropriate authorities and Government Approval Agencies. He is entitled to develop the Res which is undeniably his Plot which is duly allocated to him.

The Defendants has no right to stop him from developing the Res having obtained all the necessary approvals to do so. So this Court holds and orders.

The Defendants are therefore perpetually restrained from stopping, interfering with, harassing and otherwise in any way whatsoever challenging the Plaintiff's proprietary interest in the Res – Plot 1218 Garki 1 District Abuja CAD Zone AO1 which is a Plot

lawfully and legally allocated to the Plaintiff – Abel Behora ride a letter of offer dated 10/5/11.

The agents, assigns, privies and successors of the Defendants are also perpetually restrained as the Defendants.

The Court also Orders that the Defendants pay to the Plaintiff the sum of One Hundred Thousand Naira (N100, 000.00) only as cost of this Suit.

This is the Judgement of this Court.

Delivered today the _____ day of _____ 2020 by me.

**K.N. OGBONNAYA
HON. JUDGE**